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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Global Mentoring Solutions, Inc.

Serial No. 76487220

Sherry H. Flax of Saul Ewing LLP for Global Mentoring Solutions, Inc.

Brendan D. McCauley, Trademark Examining Attorney, Law Office 114 (K. Margaret Le, Managing Attorney).

Before Hohein, Walters and Rogers, Administrative Trademark Judges.

Opinion by Hohein, Administrative Trademark Judge:

Global Mentoring Solutions, Inc. has filed an application to register the term "REAL TIME MENTORING" for "training services in the field of computer applications and technical training for businesses via the Internet."¹

Registration has been finally refused under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the ground that, when used in connection with applicant's services, the term "REAL TIME MENTORING" is merely descriptive thereof.

¹ Ser. No. 76487220, filed on February 4, 2003, which is based on an allegation of a date of first use anywhere and in commerce of November 1, 2002.

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested. We affirm the refusal to register.

It is well settled that a term is considered to be merely descriptive of goods or services, within the meaning of Section 2(e)(1) of the Trademark Act, if it forthwith conveys information concerning any significant ingredient, quality, characteristic, feature, function, purpose, subject matter or use of the goods or services. See, e.g., In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987); and In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). It is not necessary that a term describe all of the properties or functions of the goods or services in order for it to be considered to be merely descriptive thereof; rather, it is sufficient if the term describes a significant attribute or idea about them. Moreover, whether a term is merely descriptive is determined not in the abstract but in relation to the goods or services for which registration is sought, the context in which it is being used or is intended to be used on or in connection with those goods or services and the possible significance that the term would have to the average purchaser of the goods or services because of the manner of such use. See In re Bright-Crest, Ltd., 204 USPQ 591, 593 (TTAB 1979). Thus, "[w]hether consumers could guess what the product [or service] is from consideration of the mark alone is not the test." In re American Greetings Corp., 226 USPQ 365, 366 (TTAB 1985).

Applicant contends in its brief that the term "REAL TIME MENTORING" has not been shown to be merely descriptive because, among other things, the Examining Attorney "has provided no evidence that a consumer who encounters the mark ... will immediately understand that Applicant's services are 'training services in the field of computer applications and technical training for businesses via the Internet.'" Applicant urges, instead, that "REAL TIME MENTORING is an inventive mark that creates a unique commercial impression that indicates the source of the services, not their nature" and that "consumers seeing or hearing the mark ... could not determine that Applicant provides services in the field of computer and technical applications for businesses." Noting, in particular, that the "attached www.dictionary.com and thesaurus.com entries" show that "[t]he term MENTORING means to 'serve as a trusted advisor or counselor,'" applicant argues that inasmuch as such term "is a specialized term that is not in widespread or common use in connection with computer applications and technical training, it is not merely descriptive of these services."

Applicant additionally contends that "MENTOR and MENTORING are used without disclaimer in dozens of marks on the Principal Register in connection with educational software and services." In particular, applicant points to copies it has furnished of various third-party registrations for such marks as constituting evidence that the Patent & Trademark Office ("PTO") "does not consider the term MENTORING to be merely descriptive in connection with educational or training services." As set forth

in its brief, such registrations include marks for the following services:

MENTOR ONLINE ... ([for] educational services, namely, providing on-line training and skill enhancement courses for persons in the field of credit and risk management); MENTOR TECHNOLOGIES ... ([for] training services, namely, training in the use of computers, computer networks, computer sales); MENTOR-AT-WORK ... ([for] educational and training services offered to employed personnel for relieving physical and/or emotional stress in the workplace); EXPANDING THE WORLD OF MENTORING ... ([for] educational services, namely, providing mentoring programs in the fields of career and personal development which are provided on-line); [and] PROFESSIONAL MENTORING ... ([for] providing on-line seminars and workshops in the fields of leadership, management, etc.)
....

Similarly, applicant asserts that, as shown by the copies of other third-party registrations which it has submitted, "the terms 'REAL TIME' are used in dozens of registered marks in connection with providing business enhancing services to a defined group of consumers." Such registrations, applicant insists, "are evidence that the PTO does not consider use of the terms REAL TIME in combination with another descriptive term as merely descriptive of a function or feature of the relevant goods or services." As listed in its brief, the following are examples of "word marks on the Principal Register that include the terms REAL TIME with another term":

REAL WORLD, REAL TIME, REAL I.T. ... ([for] providing an Internet website with information, news and advice about and for the information technology community); REALTIME COACHING ... ([for] seminars and workshops in the field of leadership training); REAL TIME INNOVATIONS ... ([for] computer software for use in real-time system

development); REALTIMEPUBLISHERS.COM ... ([for] electronic publishing, namely, publication of computer-related reference books on websites of others); REALTIMESITES ... ([for] information network services, namely, designing and implementing web sites for others, graphic design, ... database consulting, computer security consulting and hosting web sites of others on a computer server for a global computer network); REAL TIME KNOWLEDGE ... ([for] providing information and interpretation and analysis of information in the healthcare field); REALTIME EVENTS ... ([for, *inter alia*,] educational services, namely, providing educators and school-aged children interactive activities in the field of world wide web navigation and exploration pertaining to current events via subscriptions to websites that stimulate interaction between student, teacher and a global computer network); REAL-TIME WORKSHOP ... ([for] computer software for real-time control and simulation); REAL TIME BANKING ONLINE ... ([for] banking services); REAL DATA. REAL TIME. ... ([for] medical and dental insurance administration services, namely on-line verification of benefits, patient eligibility and tracking of benefits utilization by the insured, submissions of claims by the provider and adjudications); REAL TIME REMOTE ... ([for] teleconferencing services, namely, a marketing process that enables people and groups in remote locations to meet via on-line computer networks and telephone technology supported by professional facilitators); [and] REAL-TIME STUDIO ... ([for] use by developers in designing and documenting hardware/software applications in the field of real-time systems).

The Examining Attorney, on the other hand, asserts in his brief that, "when viewed in relation to the applicant's services, the applicant's mark [merely] describes a characteristic or feature of the applicant's services." In this regard, the Examining Attorney notes with respect to the term "real time" that he has made of record a definition of such term

from The American Heritage Dictionary of the English Language (3rd ed. 1992) as meaning "the actual time in which a physical process under computer study or control occurs." In view thereof, the Examining Attorney maintains that, "[i]n relation to the applicant's training services provided via the Internet, the wording indicates that the applicant's training services take place in actual time in which a physical process under computer study or control occurs, namely, the training takes place in actual time over the Internet."

As further support therefor, the Examining Attorney notes that he has made of record, with his denial of applicant's request for reconsideration of the final refusal, "fifty excerpted articles in which the wording REAL TIME was used to describe training services."² Relevant examples thereof include the following (emphasis added):

"... provide on-line and **real-time** training to employees" -- Chicago Tribune, January 18, 1996;

"... working on delivering **real-time** training programs over the Internet" -- Plastics News, July 3, 2000;

"Nortel successfully completed the **real-time** training courses." -- Ventura County Star (California), October 25, 2001;

² Although the denial of reconsideration states only that the excerpted articles were retrieved "from the examining attorney's search in a computerized database," it is presumed that the "NEXIS" database was utilized inasmuch as the Examining Attorney, in his brief, cites *In re National Data Corp.*, 222 USPQ 515, 517 n.3 (TTAB 1984), a case involving evidence obtained from the "NEXIS" database, for the proposition that the Board "has held that materials obtained through computerized text searching are competent evidence to show the descriptive use of terms." It is the better practice, however, for the computerized database from which any excerpts have been derived to be specifically identified.

"All courses are competency-based and many come with a written guarantee. Students have their preference of instructor led classes or online eLearning, which they can access 24-7 along with live, **real-time mentoring**. To find out more about ACTT's guaranteed training and the skills that are in demand, contact ACTT" -- Boston Herald, March 5, 2002; and

"... system to conduct online '**real time**' training and meetings with colleagues" -- Palm Beach Post (Florida), May 7, 2004;

Such excerpts serve to establish, according to the Examining Attorney, that "in relation to the applicant's services[,] the term REAL TIME is descriptive of a characteristic or feature of the training services, namely, the training services are provided in real time."

Utilizing a similar approach, the Examining Attorney argues with respect to the term "mentoring" that "[i]n relation to the applicant's services, the term MENTORING indicates a characteristic or feature of the applicant's services in that the training is provided by mentors or teachers." In particular, the Examining Attorney notes that he has made of record a definition from The American Heritage Dictionary of the English Language (3rd ed. 1992) of the term "mentoring" as meaning "to serve as a trusted counselor or teacher, especially in occupational settings." He also points out that, as additional evidence of the mere descriptiveness of such term, he has made of record a third-party registration of the mark "S.I.S.T.A.S. MENTORING SISTERS INTEGRATING STAYING TOGETHER ALWAYS SURVIVING" and design for, *inter alia*, "educational services, namely, mentoring

services to young women and girls" in which the word "MENTORING" is disclaimed.³

The Examining Attorney, furthermore, observes that "applicant's specimen of record also supports the conclusion that the wording MENTORING in the [applicant's] mark is descriptive in relation to applicant's services," noting that such specimen, underneath the language "Real Experts solving Real Problems in Real Time," states among other things that (emphasis added):

That's what Global Mentoring's Real Time Mentoring™ is all about! **Users now have access to certified mentors 24x7 to gain assistance and guidance throughout their online training.** Having the ability to chat with certified mentors and access an environment that fosters community learning is key to the success of distance learning.

....

Each user has ... the ability to select topic-specific classrooms to chat in. Each topic-specific classroom is monitored by certified **mentors** 24 hours a day, 7 days a week.

Your **users can chat with our mentors to clarify concepts, seek expert help and even ask for guidance** regarding certifications.

....

Such specimen, we note, also states in pertinent part that (emphasis added):

The Real Time Mentoring™ environment is the first of its kind to offer Person-2-Person Chat. **At any time during a classroom session, your employee and/or mentor can initiate a private conversation. This P2P chat allows the user to engage in further discussions with a personal mentor for further private training.**

³ Reg. No. 2,692,430, issued on March 4, 2003.

While conceding in his brief that "[a] mark which combines descriptive terms may be registrable if the composite creates a unitary mark with a separate, nondescriptive meaning," the Examining Attorney concludes, in light of the above showing of the mere descriptiveness of the terms "real time" and "mentoring" in relation to applicant's training services, that:

When viewed together, the wording ... REAL TIME MENTORING indicates the exact nature of the applicant's services as training services provided by a mentor in the field of computer applications and technical training for business over the Internet. Thus, the applicant's mark is merely a combination of descriptive terms which do not create a unitary mark with a separate, nondescriptive meaning.

As support for such conclusion, the Examining Attorney asserts that, with his denial of applicant's request for reconsideration, he made of record information "excerpted [from] web pages from the examining attorney's search on the Internet" which "directly addresses the use of the entire wording in the mark to indicate the descriptive nature of the wording in relation to training via the Internet." Such information specifically includes the following (emphasis added):

"If you are interested in engaging in an individual, **real time mentoring** session, please review AIA's calendar and then recommend at least 2 or 3 different times when you're available so we can find a mutually convenient time to connect online."
-- www.awakening.net/Chat.html (as of July 4, 2004);

"Each [training] simulation is linked directly and interactively to myriad decision support tools, references, micro- and full-length courses, community interactions, and

live, real-time mentoring by recognized experts within the appropriate domain" -- www.mindsim.com/MindSim/Corporate/simulation-.html (as of August 5, 2004);

"Developed by NJIT's Division of Continuing Professional Education, the NJIT WebMeister Certificate is an Internet-based learning program covering the same course material as the WebMaster Fundamentals Program for adult learners. Students convene for three hours each Tuesday and Thursday for intensive, interactive on-line classes covering relevant areas of web development. NJIT mentors facilitate collaborative, electronic discussions asynchronously every day and grades [sic] electronic self-assessments, assignments, and examinations. **Mentors are also available on-line for real-time mentoring.**" -- www.njit.edu/News/Releases/30.html (as of August 17, 2004);

"The advanced network offers students, faculty and the community new opportunities to communicate through such technological innovations as international video conferencing, distance or e-learning, electronic field trips, video-on-demand, real-time video streaming, on-line course work, and **real-time mentoring.**" -- www.findarticles.com/p/articles/mi_mDIGK/is_22_15ai_86041675 (as of August 24, 2004) and www.opticallynetworked.com/news/article.php/-905091 (as of August 28, 2004);

"For resellers, the advent of Web-based learning communities is a huge boom, providing them with the opportunity to market and sell branded training services to their customers without having to invest in the infrastructure needed to do this. Instead, ... customers can interact with the ... new Web-based learning community. The community is hosted by a third-party that also handles all of the back-end processes such as billing, introducing new courseware and updates, and managing the **real-time mentoring interaction between experts and learners.**" -- www.findarticles.com/p/articles/mi_m3563/is_37_15/ai_57386627 (as of September 3, 2004);

"How do we blend the best of synchronous (live) events with authored asynchronous (on-

demand) events? This is a hot question as organizations start to expand their on-line learning offerings. I would love to be able to offer learners a stronger integration of threaded discussions, **real-time mentoring**, scheduled audio-graphic presentations and authored ... products." -- www.masie.com/-masie/default.cfm?trends=105&page=trends-display (as of September 5, 2004);

"The SmartForce solution features the industry's largest body of e-Learning content, technologies for the delivery and management of learning, collaboration tools with **real-time mentoring** and a learning community of more than two million users." -- www.e-learningzone.co.uk/news_3q.html (as of September 6, 2004);

"... Elluminate, Inc., a leading provider of live eLearning ..., and Thomson Higher Education ... announced today that the companies have extended a multi-year agreement to use Elluminate's vMentor™ service This **service provides real-time mentoring to students** that purchase many of Thomson Higher Education textbooks.

....
Using vMentor, Thomson textbook customers now have on-demand, instant access to highly qualified instructors to help them learn." -- www.elluminate.com/press_Thomson-.jsp (as of September 8, 2004); and

"Information Builders' eLearning initiative allows you to customize a curriculum that includes a library of self-paced tutorials as well as eLearning seminars. **Our live, online seminars are taught by instructors for real-time mentoring.** Use Information Builders' eLearning curriculum as stand-alone training or in complement with traditional classroom instruction." -- education.informationbuilders.com/edu/courses/elearning/elearning.jsp (as of September 8, 2004).

As further support for his position, the Examining Attorney refers in his brief to the "excerpted article of record ... from the Boston Herald, March 5, 2002 [edition]," which as

previously reproduced in relevant part herein shows "use of the entire wording in the applicant's mark in a descriptive manner to refer to educational services" by stating that: "Students have their preference of instructor led classes or online eLearning, which they can access 24-7 along with live, **real-time mentoring**" (emphasis added). Moreover, while not mentioned in his brief, we note that as stated in the final refusal, the Examining Attorney made of record excerpts from five "websites obtained from the Internet on February 20, 2004" which "show use of the wording REAL TIME MENTORING in connection with educational services offered on the Internet" by various third parties. Such evidence also demonstrates, as set forth in the final refusal, that "[t]he term MENTORING is not a specialized term used in connection with training services" but, rather, "[a]s indicated by the webpages, the term is often used in connection with the wording real time." Representative examples thereof include, in addition to the excerpt quoted above from www.awakening.net/Chat.html regarding "Insight Mentoring Chat Sessions, the following (emphasis added):

"Virtually no other [training] system gives you an online community that will help you overcome obstacles (both through **real time mentoring** and asynchronous online tutorials)." -- www-ed.fnal.gov/lincon/w99/-projects/muve/student_beginning.htm;

"SmartForce is the world's largest e-Learning company.

....
SmartForce: ... Offers **real-time mentoring** through the world's largest in-house mentoring organization.

....
SmartForce e-Learning is different, and better than any other e-Learning. It is different because it is not just web

distribution of courses It is a next generation e-Learning environment made up of over 20,000 e-Learning objects that can be assembled on-the-fly to create truly personalized, truly collaborative learning experiences It is an environment that is moderated by humans...live subject experts they call SmartMentors that are instantly accessible to answer questions any time of day or night, 7 days a week, 365 days a year. **No other e-Learning offers live, instant mentoring.**" -- www.itec.suny.edu/scsys/cbt/-Doc/SFdescription.htm;

"Kidlink Workshop For Principals of Schools

....
Contents: ...

4. Teaching, Learning, Collaborating: Tapping the Kidlink Networking Opportunities
... Real-Time Mentoring, on-line leadership development." -- www.kidlink.org/kie/ws/principals.html; and

"All Strategem employees have unlimited access to eLearning courses with real-time mentoring, Interactive seminars, workshops, and white papers are also offered. The SmartForce course offerings are adjusted periodically." -- www.strategemconsulting-.com/careers/education.html.

The Examining Attorney, therefore, maintains in his brief that "[t]he plain meaning of the wording in the applicant's mark when viewed in relation to the applicant's services, in addition to the nature of the wording as used in the marketplace as evidence [sic] by the excerpted article and web pages of record[,] establish the [merely] descriptive nature of the applicant's training services as [being] provided by means of real time mentoring." With respect, however, to applicant's reliance on the absence of disclaimers of the terms "REAL TIME," "MENTOR" or "MENTORING" in various third-party registrations as

evidence supporting applicant's argument that the Patent and Trademark Office does not consider such terms to be merely descriptive of educational or training services, the Examining Attorney contends that:

[T]hird-party registrations are not conclusive on the question of descriptiveness. Each case must be considered on its own merits. A proposed mark that is merely descriptive does not become registrable simply because other similar marks appear on the register. *In re Scholastic Testing Service, Inc.*, 196 USPQ 517 (TTAB 1977); TMEP §1209.03(a). In this case, the evidence of record fully supports the examining attorney's determination that the applicant's mark is [merely] descriptive in relation to the applicant's services.

Upon consideration of the evidence and arguments presented, we agree with the Examining Attorney that, when considered in its entirety, the term "REAL TIME MENTORING" is merely descriptive of applicant's "training services in the field of computer applications and technical training for businesses via the Internet." The evidence made of record by the Examining Attorney, along with applicant's specimens of use, demonstrate that such term immediately conveys, without need for speculation or conjecture, that a significant feature, function, or characteristic of applicant's services is that they provide mentoring in real time, that is, mentoring is offered to students as or while the training is rendered. In the context of applicant's services, there is nothing in the term "REAL TIME MENTORING" which is incongruous, ambiguous or suggestive, nor is there anything which would require the exercise of imagination, cogitation or mental processing, or necessitate the gathering of

further information, in order for the merely descriptive significance thereof to be readily apparent to customers for and users of applicant's training services. Instead, the term "REAL TIME MENTORING" conveys forthwith that a significant aspect of the provision of such services is the online availability to students, during the actual time in which training is provided (*i.e.*, in real time), of a teacher or counselor (*i.e.*, a mentor) to answer students' questions and otherwise facilitate learning (*i.e.*, mentoring).

As to the third-party registrations relied upon by applicant, it is indeed the case that the majority of those specifically mentioned by applicant (as recited previously herein) do not contain a disclaimer. In particular, none contains a disclaimer of "MENTOR" or "MENTORING," although half (six of 12) of the others do contain a disclaimer of "REAL TIME" or its equivalents "REAL-TIME" and "REALTIME"⁴ and thus, in such instances, evidence the mere descriptiveness thereof in connection with the identified goods and services. Nonetheless, to the extent that a majority of the third-party registrations could arguably be said to lend some support to applicant's

⁴ See Reg. No. 2,691,292, issued on February 25, 2003 for the mark "REAL TIME KNOWLEDGE" for "providing information and interpretation of information in the healthcare field"; Reg. No. 2,258,519, issued on July 6, 1999 for the mark "REAL-TIME INNOVATIONS" for "computer software for use in real-time system development"; Reg. No. 1,987,523, issued on July 16, 1996 for the mark "REAL-TIME WORKSHOP" for "computer software for real-time control and simulation"; Reg. No. 2,648,106, issued on November 12, 2002, for the mark "REAL DATA. REAL TIME." for "medical and dental insurance administration services"; Reg. No. 2,507,504, issued on November 13, 2001 for the mark "REAL-TIME STUDIO" for "computer software for use by developers in designing and documenting ... applications in the field of real-time systems"; and Reg. No. 2,187,475, issued on September 8, 1998 for the mark "REAL

position, they fail to demonstrate that the term "REAL-TIME MENTORING" is suggestive rather than merely descriptive of applicant's services or collectively serve to create any doubt with respect thereto, given the evidence introduced by the Examining Attorney.

In this regard, it is well settled that while uniform treatment under the Trademark Act is an administrative goal, our task in an ex parte appeal is to determine, based on the record before us, whether applicant's mark is merely descriptive. As has often been noted by the Board, each case must be decided on its own merits. We are not privy to the records of the third-party registration files and, moreover, the determination of registrability of the particular marks which are the subjects thereof is simply not controlling in this case. In particular, as our principal reviewing court noted in *In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001), "[e]ven if some prior registrations had some characteristics similar to [applicant's] application, the ... allowance of such prior registrations does not bind the Board or this court." See also, *In re Broyhill Furniture Industries Inc.*, 60 USPQ2d 1511, 1514 (TTAB 2001); and *In re Pennzoil Products Co.*, 20 USPQ2d 1753, 1758 (TTAB 1991). Instead, the question of whether a mark is merely descriptive must be determined based on the evidence of record at the time registration is sought. See, e.g., *In re Sun Microsystems Inc.*, 59 USPQ2d 1084, 1088 (TTAB 2001) [in holding "AGENTBEANS" merely descriptive of computer software for use in

TIME REMOTE" for "teleconferencing services ... supported by

development and deployment of application programs on a global computer network, Board noted its agreement "with the Examining Attorney that the 'vocabulary used in the computer field changes rapidly' and [that] registration of some of the [third-party] marks may have resulted from the lack of evidence that would have supported a refusal at the time the underlying applications were reviewed"]; and TMEP Section 1209.03(a) (4th ed. 2005).

Accordingly, because the evidence of record herein on the whole demonstrates that, as explained above, the term "REAL TIME MENTORING" forthwith conveys a significant feature, function or characteristic of applicant's training services, it is merely descriptive thereof within the meaning of the statute.

Decision: The refusal under Section 2(e)(1) is affirmed.